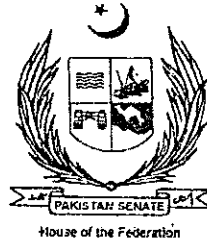


SENATE OF PAKISTAN



REPORT NO. 15

REPORT OF THE SENATE STANDING COMMITTEE ON LAW AND JUSTICE



“THE CONSTITUTION (AMENDMENT) BILL, 2021”

(Amendment of Articles 57, 62, 72, 73, 86, 126, 159, 160, 162 and 166)

PRESENTED BY

Senator Syed Ali Zafar

Chairman

Standing Committee on Law and Justice

SENATE SECRETARIAT

REPORT OF THE STANDING COMMITTEE ON LAW AND JUSTICE ON "THE CONSTITUTION (AMENDMENT) BILL, 2021"

I, Senator Syed Ali Zafar, Chairman Standing Committee on Law and Justice, have the honor to submit, on behalf of the Committee, this report on "The Constitution (Amendment) Bill, 2021" (Amendment of Articles 57, 62, 72, 73, 86, 126, 159, 160, 162 and 166) moved by Senator Mian Raza Rabbani, in the Senate sitting held on 5th April, 2021, and referred to the Committee for consideration and report.

2. The composition of the Committee is as under:-

1. Senator Syed Ali Zafar	Chairman
2. Senator Syed Shibli Faraz	Member
3. Senator Azam Nazeer Tarar	Member
4. Senator Mian Raza Rabbani	Member
5. Senator Farooq Hamid Naek	Member
6. Senator Syed Muzafar Hussain Shah	Member
7. Senator Kamran Murtaza	Member
8. Senator Muhammad Azam Khan Swati	Member
9. Senator Walid Iqbal	Member
10. Senator Manzoor Ahmed Kakar	Member
11. Senator Musadik Masood Malik	Member
12. Senator Samina Mumtaz Zehri	Member
13. Senator Mustafa Nawaz Khokhar	Member
14. Minister for Law and Justice	Ex-Officio Member

3. The Committee considered the Bill in its various meetings previously and held conclusive discussion in the meeting on 11th May, 2022, under the Chairmanship of Senator Syed Ali Zafar, with the following in attendance:

1. Senator Mian Raza Rabbani	Member/ Member In-Charge
2. Senator Manzoor Ahmed Kakar	Member

- | | |
|---------------------------------|-------------------|
| 3. Senator Musadik Masood Malik | Member |
| 4. Senator Mushtaq Ahmed Khan | Member In-Charge |
| 5. Minister for Law and Justice | Ex-Officio Member |

4. While discussing the Bill under consideration, Senator Mian Raza Rabbani informed the committee that he seeks amendments in Articles 57, 62, 67, 72, 73, 86, 89, 126, 159, 160, 162 and 166 of the Constitution of Pakistan, which call for enhancement of powers and effectiveness of Senate. In this regard, resolutions no. 275, 294, 305 dated 5th August 2016, 19th December 2016 and 13th February 2017 were passed by Senate, in which it was unanimously approved that Senate's role must be enhanced through Constitutional amendments and more financial powers must be delegated to the Senate. During this process, correspondence with provinces was also done. All of these proceedings were recorded in Minutes of House Business Advisory Committee. In the meeting held on 11th May, 2022, the honorable Senator shared a letter (Attached as annexure-A) with the honorable Members, addressed to the Chairman Committee and the Minister for Law and Justice. The Senator also read out the letter with permission of the Chair, stating therein that in view of ongoing Constitutional violations and crisis in the country, his proposals for Constitutional amendments may be withdrawn. He asserted that it is the need of hour to defend the Constitution rather than amend it. The Chairman, Minister for Law and Justice and Members of the Committee appreciated efforts made by Senator Mian Raza Rabbani in drafting the bill and tried to convince him to reverse his decision, to which honorable Member In-Charge respectfully refused.

5. At this, the Committee decided that the Bill under consideration may be withdrawn and recommended that the Senate may grant leave to Senator Mian Raza Rabbani to withdraw "The Constitution (Amendment) Bill, 2021" (Amendment of Articles 57, 62, 72, 73, 86, 126, 159, 160, 162 and 166). Copy of the Bill is annexed (Attached as annexure-B).



(Haris Rehman)

Principal Secretary to Chairman Senate /
Secretary Committee



(Senator Syed Ali Zafar)

Chairman, Standing Committee on Law and Justice



Senator Mian Raza Rabbani

Chairman
Standing Committee
Inter-Provincial Coordination
Senate of Pakistan

Senator Syed Ali Zafar,
Chairman,
Senate Standing Committee on Law and Justice,
Senate of Pakistan,
Islamabad.

Dated: 11th May, 2022.

Sir,

I have moved the following amongst other Bills;

- i) The Constitution (Amendment) Bill, 2021, amendment to Articles 57, 62, 72, 73, 86, 89, 126, 159, 160, 162 and 166.
- ii) The Constitution (Amendment) Bill, 2021, amendment to Article 160.
- iii) The Constitution (Amendment) Bill, 2020, amendment to Article 89.
- iv) The Constitution (Amendment) Bill, 2021, amendment to Article 89.
- v) The Constitution (Amendment) Bill, 2022, amendment to Article 27.

The above all, Bills pertain to amendments in the Constitution, 1973, which is a sacred document and is the fiber which holds the federation together. Such amendments pertain to and deal with enhancing the powers of the Senate, which in a federal structure is the linchpin, structuring discretion of the Federal Government of promulgating Ordinances, enhancing the share of the Provinces if the NFC Award is not issued within the timeframe prescribed under the Constitution, 1973.

Constitutional amendments need to be passed with the broadest political consensus in which all stakeholders have been consulted and their point of view

accommodated. As the Constitution is not the property of a political party but belongs to the people, who must rise to defend and protect it from adventures.

In the given circumstances when offices functioning under the Constitution are willfully violating the Constitution, 1973, moving amendments in the said document, when it, itself is struggling to survive, seems inappropriate. When misinterpreting and or violating the Constitution, 1973, or bringing into disrepute institutions working under the Constitution, seems to have a premium. I do not wish to burden the record of the Senate Standing Committee on Law and Justice and the Senate with the aforesaid Bills.

These are times when the Constitution, 1973, must be preserved and protected if the federation is to survive, rather than bringing amendments. This is a battle for the survival of the Constitution, 1973.

Therefore, I as the mover of the said Bills, exercise my prerogative under Rule 115, Rules of Procedure and Conduct of Business in the Senate, 2012, and hereby declare my intention to move for the withdrawal of the said Bills.

In this sea of unconstitutionality and lack of rule of law, this withdrawal is a mark of protest on behalf of the overwhelming majority of Pakistanis, against the game of power politics, which is tearing and polarizing our society, bringing severe strains on national security and indeed the federation itself.

Thanking you,

Yours truly,


(SENATOR MIAN RAZA RABBANI)
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Cc.

✓ 1. The Federal Minister for Law and Justice, Islamabad.

As
[TO BE INTRODUCED IN THE SENATE]

A

BILL

further to amend the Constitution of the Islamic Republic of Pakistan

WHEREAS it is expedient further to amend the Constitution of the Islamic Republic of Pakistan for the purposes hereinafter appearing;

WHEREAS to effectively enforce participatory federalism, ensure provincial autonomy, provide a meaningful participation to the Provinces and other territories in the affairs of the Federation, there is a need to revisit the legislative competence, parliamentary oversight and other functions of the Senate of Pakistan, in particular its relationship with the Provinces. The Senate through earlier Resolutions No. 275, 294 and 305 dated 5th August, 2016, 19th December, 2016 and 13th February, 2017, respectively, has reaffirmed to enhance the role of the House of the Federation;

It is hereby enacted as follows:-

1. Short title and commencement. (1) This Act may be called the Constitution (Amendment) Act, 2021.

(2) It shall come into force at once.

2. Amendment of Article 57 of the Constitution.- In the Constitution of Islamic Republic of Pakistan, hereinafter referred to as the Constitution, in Article 57-

(i) before the words "The Prime Minister", the brackets and figure (1)" shall be inserted; and

(ii) after the renumbered clause (1), the following new clause (2), shall be inserted namely:-

"(2) A Chief Minister shall have the right to speak and take part in the proceedings of the Senate of Pakistan when so invited by the Chairman, but shall not by virtue of this Article be entitled to vote."

3. Amendment of Article 62 of the Constitution.- In the Constitution, in Article 62, in clause (1), in paragraph (c), for the words "enrolled as a voter in", the words and commas "a registered voter and resident for five years of" shall be substituted.

4. Amendment of Article 72 of the Constitution.- In the Constitution, in Article 72,-

- (i) in clause (2), after the words "Speaker of the National Assembly" the words "or Chairman of the Senate" shall be inserted;
- (ii) in clause (4), for the full stop occurring at the end a colon shall be substituted and thereafter, the following proviso shall be inserted, namely:

"Provided that one vote of a Member of Senate shall be proportionate to the total number of seats in the National Assembly divided by the total number of seats in the Senate."

5. Amendment of Article 73 of the Constitution.- In the Constitution, in Article 73, in clause (1A), for the full stop occurring at the end a colon shall be substituted and thereafter, the following proviso shall be inserted, namely:-

"Provided that simultaneously the National Assembly shall inform the Senate about the status of recommendations of the Senate on the Bill, which shall include details as to the recommendations incorporated in the Bill and recommendations not incorporated, along with the reasons for non-incorporation."

6. Amendment of Article 86 of the Constitution.- In the Constitution, in Article 86, for the words "Federal Government", the word "Senate" shall be substituted.

7. Amendment of Article 89 of the Constitution.- In the Constitution, in Article 89, in clause (2), for the existing paragraph (a), the following shall be substituted, namely:

- (a) shall be laid before both Houses and shall stand repealed at the expiration of one hundred and twenty days from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by either House, upon the passing of that resolution.

Provided that either House may by a resolution extend it for a further period of one hundred and twenty days and it shall stand repealed at the expiration of the extended period, or if before the expiration of that period a resolution disapproving it is passed by a House, upon the passing of that resolution:

Provided further that extension for a further period may be made only once; and"

8. **Amendment of Article 126 of the Constitution.**- In the Constitution, in Article 126, for the words "Provincial Government", the words and commas "Senate, on the recommendation of the Provincial Government," shall be substituted.

9. **Amendment of Article 159 of the Constitution.**- In the Constitution, in Article 159, in clause (4), for the words "an arbitrator appointed by the Chief Justice of Pakistan", the words "the Senate" shall be substituted.

10. **Amendment of Article 160 of the Constitution.**- In the Constitution, in Article 160, after clause (5), the following new clause (5A) shall be added, namely:

(5A) If the next Award of National Finance Commission could not be announced within five years the Government shall take permission from the Senate to extend the previous Award for another year.

Provided that in case of extension the Senate may increase the Award to the Provinces by one percent.

Provided further that in case of every extension, the Senate may further increase the Award for the Provinces by one percent annually.

11. **Amendment of Article 162 of the Constitution.**- In the Constitution, in Article 162, for the words "National Assembly", the word "Senate" shall be substituted.

12. **Amendment of Article 166 of the Constitution.**- In the Constitution, for Article 166, the following shall be substituted, namely:

166. **Borrowing by Federal Government** (1) The executive authority of the Federation extends to borrowing upon the security of the Federal Consolidated Fund within such limits, if any, as may from time to time be fixed by Act of Majlis-e-Shoora (Parliament), and to the giving of guarantees within such limits, if any, as may be so fixed.

(2) Every borrowing agreement entered by the Federal Government shall be ratified by the both Houses of Majlis-e-Shoora (Parliament)."

STATEMENT OF OBJECTS AND REASONS

The Senate of Pakistan on the 5th August, 2016, 19th December, 2016 and 13th February, 2017 passed Resolutions to enhance its role and powers, to protect the rights of the federating units and ensure meaningful participation of the provinces in the affairs of the Federation. These Resolutions gave voice to the longstanding demand of the Provinces, members and other stakeholders that there is a need to revisit the legislative competence, parliamentary oversight and other functions of the Senate of Pakistan in particular its relationship with the Provinces.

**SENATOR MIAN RAZA RABBANI
MEMBER-IN-CHARGE**